IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/09/2003

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.14571 of 2000

1. Vivekanandam Pillai
2. S.Gurumoorthi Pillai
3. R.Ramanathan Pillai
4. K.Natarajan Pillai Petitioners

-Vs-

1. Government of Tamilnadu
rep. by its Secretary
Religious Endowments
Fort St.George, Chennai 9.

2. The Commissioner
HR & CE Admn., Department
Nungambakkam, Chennai 34.

3. Thiru K.Sivanandam Pillai
Kara Pidagai North Sethi Via
thirupoondi, Nagapattinam Taluk
Thanjavur District Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, as stated therein.

For Petitioners : Mr.W.C.Thiruvengadam

For Respondents : Mr.G.sukumaran
Special Government Pleader

:ORDER

This writ petition has been filed by the petitioners for the issuance of a writ of Certiorari, to call for the records of the first respondent in G.O(Per) No.118 dated 26.04.2000 and communicate the same through Govt.Lr.No.27402/Ani.4-1/97-20 dated 27.07.2000 and to quash the same.
2. In the affidavit filed in support of the writ petition is is stated as follows:
(i) The petitioners are jointly maintaining the affairs of a charity created by one S.A.Samu Pillai for the performance of specific endowments in

certain temples by a Will dated 09.10.1897. The third respondent is also entitled to function as trustee of the charity. The Trust is popularly known as Kamatchi Amman Chatram situated in Kara Pidagai Village, consisting of certain specific endowments to be performed in certain temples.

(ii) By a suo motu proceedings in O.S.No.38/1965, the Deputy Commissioner, Thanjavur allocated the income of Sri Kamatchi Amman Chatram under Section 63(f)and(g) of the HR&CE Act. Thus, it is clear that Sri Kamatchi Amman Chatram comes under the provisions of the Act 22/1959. In that order it was pointed out that the trustees of the Chatram are entitled to perform certain endowments as stipulated by the founder in the original Will and earmarked the funds for such purposes. By that order, 15% of the total income from all the lands endowed in the settlement deed should be spent for all the religious charities. The trustees also accepted this allocation.

(iii) Once the charity in question has been brought under the control and provisions of HR&CE Act 22/1959, by way of instituting proceedings under Section 63(f)and(g), it is clear that the charity does not possess the character of charitable endowment. To bring the charity or any other institution under the control, the Government has to invoke Section 3(1) of the Act and notify the institution after giving adequate opportunity and making out a prima facie case. After such notification under Section 3(1) of the Act, the Chatram will be described as a specific endowment coming under Section 6(18) and 6(19) of the Act 22/1959. Until the provisions of Section 3(1) is invoked, the Chatram cannot be brought under the control of the Act directly.

(iv) In the instant case, by the proceedings under Section 63(f)and(g) of the Act, the Chatram had already been brought under control and provisions of the Act and also the income has been assessed for the purpose of levying contribution under Section 92 of the HR&CE Act.

(v) While so, the first respondent by G.O.Ms.No.270, dated 08.03.198 8, has notified this Kamatchi Amman Chatram under Section 3(1) of the Act on the ground of certain irregularities found in the management of hereditary trustees. The earlier proceedings under Section 63(f) and(g) of the Act was also shown in the notification order, but he did not go into the question whether the order passed by the Deputy Commissioner, Thanjavur under Section 63(f)and(g) has become final and there is no further necessity to invoke Section 3(1) Of the Act.

(vi) The petitioner has filed W.P.No.4829 of 1988 and obtained interim injunction. But, finally the writ petition was dismissed on the ground that the Government has power to invoke Section 3(1) of the Act, but did not go into the question in regard to the previous proceedings under Section 63(f)and(g) and erroneously dismissed the said writ petition. There upon W.A.No.681 of 1997 was filed and the Division Bench of this Court set aside the notification order and remanded the matter to the Government to hear the trustees on the question whether Section 3(1) should be invoked in a case where allocation proceedings had already taken place under Section 63(f)and(g) of the Act.

(vii) Thereafter, the Government passed an order in G.O(Per) No.118 dated 26.04.2000, thereby confirmed its previous orders. The Government did not consider the Division Bench order when it was remanded. The Government failed to note as to how section 3(1) should be invoked to a specific endowment which has already been brought under the control of the HR&CE Act.

(viii) In O.A.No.38 of 1965, the character of the institution has been established; unless it is a specific endowment, proceedings under Section 63(f)and(g) of the Act cannot be invoked; the allocation proceedings cannot be taken up for a Chatram which comes under Section 6(5) of the Act. When a Notification under Section 3(1) of the Act is issued, the entire Chatram would be called as a specific endowment coming under Section 6(19) of the Act. In the instant case, having passed an order already and allocations were also made, the question of invoking section 3(1) does not arise. Hence, the impugned order of the first respondent is defective, illegal and without jurisdiction and hence liable to be set aside.
(ix) The petitioners are in possession of the property and functioning as hereditary trustees. Hence, the writ petition to quash the impugned order as stated above.

3. The Deputy Secretary to Government has filed the counter affidavit on behalf of the first and second respondents. In that counter, it is stated as follows:
(i) One Arunachalam Pillai by a Will dated 15.03.1876, directed his son Samu Pillai to construct a Chatram known as Sri Kamatchiamman Chatram in Karapidagai Village, Vadakkusethi, Nagapattinam Taluk and to perform charitable expenses. The Will is also referred in the settlement deed dated 09.10.1897 executed by Sri Samu Pillai, son of Arunachalam Pillai. Samu Pillai constructed a Chatram as per the wishes of his father and dedicated properties of about 86.56 Acres of land by a settlement deed dated 09.10.1897.
(ii) The Deputy commissioner, HR&CE, Administration Department, Thanjavur by his order dated 24.04.1966, passed in O.A.No.38 of 1965, allocated 15% of the annual income from the properties of the Chatram be utilised for religious purposes and the remaining 85% of the income shall be spent towards the secular charities. The religious charities fall under Section 6(16) of Tamilnadu HR&CE Act.
(iii) Further any religious charity is a specific endowment as defined under Section 6(19) of the Act, thus come within the meaning of the definition of religious institutions under Section 6(18) of the Act. Once an allocation of funs has been made between the religious and secular aspects, the portion allocated to the religious uses becomes amenable to the provisions of the Act.
(iv) The secular charities that are to be performed in the Chatram for which 85% of the annual income from the properties earmarked are: (a) performance of water pandal charity at Ettukudy village on the day of Chaitra Powarnami and performance of water pandal charity during summer in Karapidagai Chatram (b) Feeding of twenty Brahmins of each Tamil New Year's day in Karpidagai Chatram. (c) Feeding of Hindus daily in Karapidagai Chatram.
(v) Further in the instant case, single endowment has been made both for religious and charitable purposes. Charitable endowments do not straight away come within the scope of the above said Act. The provisions of the Act can be made applicable to charitable endowments only in cases of mismanagement or when the trustees opt to come under the provisions of the act by themselves by invoking the said Section 3 of the Act. If the charities are of a composite character, where the properties endowed are common for religious and secular purposes, the apportionment of the income between the religious and charitable portion has to be done in the first instance before invoking section 3 of the Act. The allocation of the income from the properties

towards religious and secular purposes has already been made by the Deputy Commissioner, HR&CE Administration Department, Thanjavur. Therefore, the prerequisite for application of section 3 has already been complied with.

(vi) Further it is stated that Section 3 of the Act empowers the Government to notify any charitable endowment which is not properly managed. As there were allegations regarding the mismanagement of the trust, Government have in G.O.Rt.No.1538 dated 20.12.1977, authorised the Commissioner to enquire into the affairs of the charities and to report to Government as to whether in the interests of the administration of the said charities, it is necessary to extend the provisions of the Act by way of notification under Section 3 of the Act. The report sent by the Commissioner proves the existence of mismanagement in the administration of the charitable endowment and therefore, the Government ultimately issued notification in G.O.Ms.No.270, Commercial Taxes and Religious Endowments Department dated 08.03.1988, to call for objections from the persons interested in the charitable endowment as required under Sub-Section (3) of Section 3 of the Act. The trustees of the Chatram immediately on receipt of a show cause notice from the Government filed the writ petition.

(vii) In WP.No.4829 of 1988, it was contended that the Deputy Commissioner made order under Sections 63(f)and(g) of the Act, already it was not open to the Government to take action under Section 3 for the purpose of declaring the charity as public charitable endowment. The said writ petition was dismissed with an observation that the order was passed in the year 1966 on suo motu proceedings and it was merely a statement regarding the application of the income which was not subject to specific endowment. Finally, the High Court concluded that the impugned notification cannot be regarded as one without jurisdiction and contrary to the order made earlier and has assumed finality with reference to the question of chatram being a charitable endowment.

(viii) However, in the Writ Appeal, the High Court without setting aside the observation of the learned Single Judge about the character of the charitable endowment, has directed the appellants to go before the Secretary to Government, Commercial Taxes and Religious Endowments Department and also directed the Secretary to Government to dispose of the objections to be made by the appellants.

(ix) After giving opportunity to the petitioners and after perusal of the record, the Government felt that the contention of the petitioners that the Chatram had already been brought under the control of the HR&CE Act under Section 63(f)and(g) of the Act and thereafter the Government cannot invoke Section 3(1) of the Act was not accepted, as the charities to be performed were of a combined nature. Finally, the Government concluded that the affairs of the charitable endowment are being mismanaged and it has got every right to invoke the provisions under Section 3(1) of the Act to bring it under the effective control. Accordingly, the G.O.Ms.No.118 was passed on 26.04.2000 under Section 3 of the Act. Against that order, the present writ petition has been filed.

(x) The contention that once the charity has been brought under the control of the department under Section 63(f)and(g), it is no more a charitable endowment is not correct. The provisions of the HR&CE Act cannot be made applicable straight away to properties of this composite nature. To make such composite institution amenable to the provisions of the Act, the

allocation of income of such property has to be provided as a first step. Considering this prerequisite condition, even though it is not a statutory objection for bringing the institution under the control of the Department, the Deputy Commissioner, Thanjavur, in and by his order dated 24.04.1966, passed in O.A.No.38 of 1 965, allocated 15% of the annual income from the properties of the Chatram be utilised for religious purposes and the remaining 85% of the income shall be spent towards the secular charities. The Religious Charities fall within the meaning of Section 6(16) of the Act and it is a "Specific Endowments" as defined under Section 6(19) of the Act. Therefore, it is religious institution as defined under the Act.

(xi) Once allocation has been made among the properties between the religious and secular purposes, the portion allocated to religious uses become amenable to the provisions of the Act. The charitable endowments which are secular in nature do not straight away come within the scope of the Act. The provisions of the Act can be made applicable to charitable endowment in case of mismanagement. Therefore, the prerequisite for bringing under Section 3 of the Act has been complied with. The institution called "Kamatchi Chatram" has not been brought under the control of the department.

(xii) As the secular portion of the charities also were not properly managed, it becomes necessary for the Government to issue show cause notice in G.O.Ms.No.270, Commercial Taxes and Religious Endowments Department, dated 08.03.1988 under Section 3(3) of the Act as to why the secular portion of the charities also cannot be brought under the Act. The Notification proceedings under Section 3 of the Act is entirely different action and there was no necessity to give any finding about the proceedings initiated under Section 63(f) and (g) of the Act. The High Court in W.P.No.4829 of 1988 rightly observed the allocation of income of the Chatram has to be regarded as merely as statement regarding the application of income which was not subject to specific endowment. Further, the Notification impugned therein could not be regarded as without jurisdiction. The Division Bench in W.A.no.68 1 of 1997, has only directed to hear the objections of the petitioner and dispose of the same on merits. Based on the orders of the High Court, objections raised by the petitioners were heard after giving sufficient opportunity to them. But, the objections were rejected.

(xiii)The Government after carefully considering the materials on record, issued the notification and hence it is perfectly valid. The reasons which warrant the issue of notification under Section 3 of the Act has been explained in the order of the Government. The Prerequisite under Section 3 of the Act has already been complied with. Section 3 of the Act is an enabling provision empowering the Government to notify the charitable endowment and thereby extend the provision of the Act.

(xiv) The petitioner approached this Court withiout availing the statutory remedy provided under Section 3 of the Act. It is not correct to say that the Trusteeship is hereditary; they have not obtained any such valid declaration to that effect. Hence, the writ petition is liable to be dismissed.

4. The learned counsel appearing for the petitioners submitted that the trust was established by a trust deed and the petitioners are the hereditary trustees in accordance with the trust deed. Since it was a composite trust, both including religious as well as charitable non-religious

trust, the Deputy Commissioner suo motu excercised the power under Section 3 of the Act and passed an order in the year 1965 in O.A.No.38 of 1965, allocated 15% of the annual income from the properties for religious trust and the remaining 85% of the income for secular charities. Therefore, 15% of the trust has become a specific endowment within the definition of section 6(19) of the Act. The decision passed by the Deputy Commissioner, HR&CE in O.A.No.38 of 1965 has become final and therefore, only 15% of the income be specific endowment and the balance 85% income is only a secular charities. Therefore, the respondent has no authority or right to regulate or manage or take control of the 85% of the income.

5. In support of his contention, the learned counsel appearing for the petitioner referred to the Judgment of the Supreme Court in Sri Singam Chetty Attendrooloo and others Vs. The State of Tamil Nadu and others reported in (AIR 2001 SC 2161), wherein the Supreme Court has held that when the endowment Board had passed an order to the effect that 50 percent of income of Trust should form religious endowment to which provisions of Act would apply, it was within its jurisdiction. It had become final, as the order was not challenged by the Charity for 55 years. The learned counsel submitted that the order in O.A.No.3 8/1965 had become final, so far as this Charity is concerned, and hence the authorities cannot once again change the quantum.

6. Further the counsel argued that the authorities cannot take over the administration under Section 3(1) of the Act straight away. Before proceedings under Section 3(1) of the Act, a show cause notice could have been given, enquiry could have been conducted and only after that, if the government is satisfied that the endowment is mismanaged, the administration of the charitable endowment can be taken over. But, in this case, without following the procedure under Section 3(1) of the Act, the action of the respondents in taking over the entire administration is illegal and hence i t is liable to be set aside.

7. On this point, the learned counsel for the respondents has also been heard.
8. In the counter affidavit, it has been specifically stated that as per the order of the Division Bench in the W.A.No.681 of 1997, the objections raised by the petitioners were heard and after giving sufficient opportunity, their objections were rejected as they were not well founded. Further it is stated that the provisions of the Act can be extended to non-religious, but charitable endowments only in cases of mismanagement or when the trustees by themselves opt to come under the provisions of the Act voluntarily. Further it is stated in para-12 of the counter that it became necessary for the Government to issue show cause notice in G.O.Ms.No.270 dated 08.03.1988 to the petitioner under Section 3(3) of the Act. Only thereafter, these proceedings have been incorporated and the impugned order has been passed.
The impugned order reads as follows:
No.II(2)/TDCRE/529/2000 □ whereas it has been represented to the Government of Tamil Nadu that there are irregularities in the administration of the Charitable Endowment known as 'Karapidagai Kamatchiamman chatram', Nagapattinam Taluk, Nagapattinam District as enumerated in the schedule below:

And, whereas, the Government have reason to believe that the said Charitable Endowment is being mismanaged;
And, whereas, notice has been previously published as required by the proviso to Sub-section (3) of section 3 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)
And, whereas, the Government are satisfied after considering the objections and after having heard personally their representative as per the order of the High Court, Chennai that in the interests of the administration of the said Charitable Endowment, it is necessary to extend to it, all the provisions of the said Act and rules made thereunder;
Now, therefore, in exercise of the powers conferred by sub-section (3) of Section 3 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959), the Governor of Tamil Nadu hereby extends to the said Charitable Endowments, all the provisions of the said Act and rules made thereunder.

From this, it is clear that objections were heard from the petitioners before passing the impugned order. The show cause notice had been issued in the year 1988. Therefore, there is no violation of the procedure. The arguments of the learned counsel for the petitioner is that once the order has been passed under Section 3(1) of the Act, by exercising suo motu power, thereafter further proceedings under Section 3(1) cannot be taken. This argument is not acceptable. The provisions of section 3(1) is very clear that where the Government have reason to believe that any public Charitable Endowment is being mismanaged, they may direct the Commissioner to enquire or cause an enquiry to be made by Commissioner to make the enquiry into the affairs of the country and report to them whether in the interest of administration, it is necessary to extend thereto all or any of the provisions of this Act and of any rules made thereunder. Even the Government Order refers to the pre-requisites with the reference to section 3(3). Therefore, all the procedures have been followed and all the formalities have been complied with. By this impugned G.O, to the provisions of the Act and Rules are made applicable to endowment and all the provisions of the Act are made applicable to the charities. There is nothing to prohibit the government to take over the administration of a Charity if it is satisfied that the public charitable Trust is being mismanaged.
9. The contentions of the petitioner that they are hereditary trustees is also disputed in the counter, on the ground that they are not yet been declared as hereditary trustees. That question depends upon the terms of the Will by which the trust was established. Regarding that, no orders have been passed. At present that is not the issue before this Court. As and when necessity arises that issue can be decided by the authorities.
10. For the foregoing reasons, it is clear that the impugned order is only the continuation of the proceedings initiated under G.O.Ms.No.270 dated 08.03.1988. Thus all the formalities have been complied with before passing the order under Section 3(1) of the Act.
11. In the result, the writ petition is dismissed. No costs.

ksr

Index:Yes
Internet:Yes

To
1. Government of Tamilnadu
rep. by its Secretary
Religious Endowments
Fort St.George, Chennai 9.

2. The Commissioner
HR & CE Admn., Department
Nungambakkam, Chennai 34.